

S/N 10/091,126

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Favorable reconsideration of this application is requested in view of the above amendments and the following remarks. Claims 17-19 and 21 are pending in the application. Claims 20 and 22-24 have been canceled without prejudice or disclaimer. Features of these claims have been included in claim 17.

Applicants respectfully traverse the objection to the drawings. Applicants submit that the structural details of how the projectiles and compressed air are delivered to the canister are not necessary for the understanding of the invention. Devices in which projectiles and compressed air were delivered to canisters were known at the time of the present invention and are referenced in the specification. The application is not required to disclose details that are familiar to those of skill in the art.

Claims 17-24 were rejected for lack of enablement. An editorial revision (tennis ball or baseball instead of tennis ball-sized or baseball-sized projectile) has been made in claim 17. This addresses the issue raised in the rejection.

Claim 17 was rejected as obvious over Balka '857 or Balka '283. From the discussion of the rejection, Applicants assume that claims 20-24 were intended to be included in the rejection. Applicants respectfully traverse this rejection.

Nothing in the prior art suggests that a blower having the recited properties would be sufficient for propelling a tennis ball or baseball at a speed of at least 90 mph when used with the recited canister. The features are not obvious matters of choice. Nothing in the cited references provides any guidance as to what blowers might have properties that would make them appropriate for propelling the projectiles at high speeds of 90 mph or higher. As noted in the last Amendment, the references contemplate speeds that are far lower. Nothing in the references suggests that a single motor blower drawing less than 15 amps could be found that would be suitable for this, much less providing any guidance as to any specific characteristics that would achieve this. These aspects of the invention provide significant impacts in practicality and versatility and cannot be dismissed as mere matters of choice.

The rejection contends that the claimed requirement of a speed of at least 90 mph can be dismissed as mere intended use. Applicants respectfully contend that this analysis is inappropriate. Claim 17's requirement concerning the speed of at least 90 mph reflects the properties of the apparatus itself, and thus is not a mere statement of intended use. There is

S/N 10/091,126

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nothing wrong with claiming a product by what it does rather than what it is, and such an aspect of the claimed invention cannot be disregarded in determining patentability. In re Echerd, 176 USPQ 321 (CCPA 1973). This is particularly applicable for claim 17, which in fact also includes "structural" aspects that are relevant to the speed, such as blower and canister properties. Therefore, the present invention is not suggested by the Balka patents.

Claims 18 and 19 were rejected as obvious over the Balka references discussed above, further in view of Kahelin or Beauchamp. This rejection should be withdrawn at least for the reasons discussed above, as Kahelin and Beauchamp do not remedy the deficiencies of the Balka references with respect to claim 17. Applicants are not conceding the relevance of Kahelin and Beauchamp to the features of claims 18 and 19.

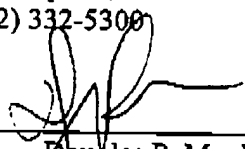
In view of the above, favorable reconsideration in the form of a notice of allowance is requested.



Date: January 13, 2005

Respectfully submitted,

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